



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 633 NEW HAMPSHIRE
JAFFREY-RINDGE COOPERATIVE SCHOOL
DISTRICT CUSTODIANS

Complaint

v.

JAFFREY-RINDGE COOPERATIVE SCHOOL
DISTRICT AND MILLARD SMITH

CASE NO. M-0615:2

DECISION NO. 92-07

APPEARANCES

Representing Teamsters Local 633 of New Hampshire:

Thomas D. Noonan, Business Agent

Represent Jaffrey-Rindge Cooperative School District:

George P. Dickson, Esq.

Also appearing:

Elmi Aho, Jaffrey Rindge School Board
Jean T. White, Jaffrey Rindge School Board
Millard J. Smith, Jaffrey Rindge School District
Keith E. Sweeney, Teamsters Local 633
Linda Bilodeau, Teamsters Local 633
Dennis A. Lambert, Teamsters Local 633
Raymond A. Hoyt, Teamsters Local 633
John E. Belletto, Jaffrey Rindge School District

BACKGROUND

On May 31, 1991, Teamsters Local 633 of New Hampshire (Teamsters) on behalf of certain employees of the Respondent filed improper practice charges (ULP) against the Jaffrey Rindge Cooperative School District (District) alleging violations of RSA 273-A:5, I (e) and (h). The District, responded through counsel, George P. Dickson, Esq., on June 17, 1991 by filing an answer and a Motion to Dismiss. The case was set for hearing and heard by the Board at its offices in Concord, New Hampshire on September 12, 1991.

The complainant charges that during bargaining sessions for the 1991-1992 contract which was ratified on January 29, 1991 and signed on or about February 5, 1991, the topic of reductions in force was discussed and a procedure

negotiated. That contract runs from July 1, 1991 to June 30, 1992, and provides at Article 4-1.1 that the grievance procedure found in the "Staff Handbook for All Non-Instructional Employees," Section M, shall apply. It provides for a multi-step review process by the supervisor, to the Principal/ Director, to the Business Administrator, to the Superintendent (who may rule on whether the issue is grievable), and finally to the Personnel Committee of the School Board whose decision is final. That same handbook (Section J) also speaks to reductions in force, to wit:

J. REDUCTION IN FORCE

- A. If it is necessary to reduce the custodial staff, as described in PELRB Case M-0615 Dated 2/8/90, or other Non-Instructional Staff, the following procedure will be utilized.
 1. As soon as a reduction in force is being considered by the School Board, the Union Business Agent and staff members shall be notified in writing specifying the nature of the proposed reduction.
 2. Reductions will first be accomplished by attrition: resignations, retirements, etc.
 3. If more reductions in force are necessary, then part-time staff shall be laid off.
 4. If further layoffs are necessary, then custodians, or other staff members will be laid off in an order determined by evaluation. If the evaluations are determined to be equal, continuous service, as described in Paragraph "D" of this Handbook, will be used as the secondary criterion.

The Handbook proclaims that it is effective for the 1991-1992 school year.

Notwithstanding the execution of the contract on February 5, 1991, the complaint alleges that the Superintendent held a meeting with all custodians on January 29, 1991, during which reductions were discussed but job eliminations were not mentioned. On or about February 12, 1991, Superintendent/Respondent Millard Smith sent a memo to "all principals and directors" which provided, *inter alia*, "As part of our District program to reduce custodial costs for 1991-1992 the position of Head Custodian in all schools of the District will be eliminated." The memo proceeded to establish which duties of the head custodians would be under taken by the principals and which would be under taken by the District Maintenance Supervisor.

Both District Exhibit No. 1 and Teamsters Exhibit No. 6 establish that the parties discussed reductions enforce at their meeting of January 29, 1991 and that provisions of the Teachers' contract (Article 15) would be ratified and included in the aforementioned Handbook. As modified, those provisions appear above.

By letter of March 20, 1991, (Union Exhibit No. 5) Millard Smith informed Thomas Noonan, Business Agent for Teamsters Local 633, as follows:

In accordance with Paragraph "J" Reduction in Force of the AGREEMENT between the Jaffrey-Rindge School Board and the Teamsters Union Local No. 633 of New Hampshire, it is the obligation of the School District to notify the Union Business Agent and staff members, in writing, specifying the nature of any proposed reduction in force which may be contemplated.

In order to meet the required staff reductions proposed in the 1991-1992 District Budget, and generally described to all staff members at a special district-wide staff meeting held at 3:30 p.m. on Tuesday, January 29, 1991, a copy of the Agenda of which is enclosed, the decision has now been made to eliminate all Head Custodian positions in all schools of the District.

All Head Custodians will be eligible for the remaining custodial positions on the basis of the Reduction in force paragraph referred to above.

Any Custodian or Head Custodian who may be contemplating retirement or resignation should be encouraged to notify the School District as soon as possible so that the impact of the reduction in force may be minimized.

As the School District employs no part-time custodians, we cannot minimize the reductions by lay-offs in this category.

Since the reduction in force will require four (4) layoffs, we will rely on Paragraph J, A, 4. of the AGREEMENT to determine which employees will be terminated.

Notwithstanding this correspondence, Noonan responded to Smith on April 9, 1991, complaining that the District's decision to eliminate the Head Custodian positions "without first utilizing the language of the contract" and to hire a supervisor to replace them was improper.

The District's answer admitted its decision to eliminate the position of Head Custodian but denied that either respondent "failed to bargain in good faith regarding reduction in force or any other matter properly on the negotiating table." By way of additional answer and in its Motion to Dismiss the District asserts that RSA 273-A:1 XI confers on the public employer (the District) the right to determine "the selection, direction and number of personnel."

FINDINGS OF FACT

1. Teamsters Local 633 of New Hampshire is the duly certified bargaining agent for Custodians and Head Custodians of Jaffrey-Rindge Cooperative School District.
2. Jaffrey-Rindge Cooperative School District is a public employer within the meaning of RSA 273-A:1, X.
3. The parties (District and Teamsters) concluded negotiations for a contract for the period July 1, 1991 to June 30, 1992 as evidenced by the signing of same on February 4 and 5, 1991.
4. On January 29, 1991, the District, through one or more of its agents conducted a meeting with custodial staff consisting of custodians and head custodians at which time the topic of reductions in force was discussed, including specific reference to four (4) custodian (not "head custodian") position, further referenced in District Exhibit No. 1 and Union Exhibit No. 4 ("Dr. John memo of January 29, 1991). Bargaining unit members

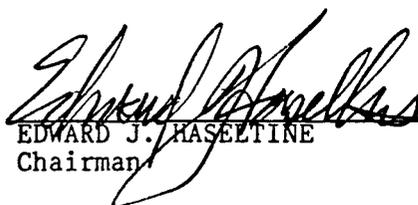
were aware of this prior to the signing of the contract on February 5, 1991.

5. On March 20, 1991, the District notified Teamsters by letter (Union Exhibit No. 5) of its intention to eliminate all head custodian positions and to abide by the Reduction in Force procedure referenced in Paragraph J, Section A-4 of the Handbook referenced above.
6. There is no evidence that the District did not abide by the Reduction in Force provision of Paragraph J, Section 4-A of the handbook or that there were other provisions pertaining to layoff or reduction in force which the District was obligated to honor and failed to do so.
7. Testimony from union witness Daniel Lambert established that unit members were told during negotiations (i.e., prior to ratification and signing of the contract) of the District's intent to eliminate up to four custodian positions.
8. There is insufficient evidence for this Board to conclude that the hiring of a Maintenance Supervisor (a non-union position) and the elimination of four "Head Custodian" positions were caused by anti-union animus or for other purposes contrary to RSA 273-A:5, I.
9. Article 2 of the current contract acknowledges the parties understanding that neither the Board nor the Superintendent may lawfully delegate "powers, discretion and authorities which by law are vested in them" and their agreements that the contract will not be construed to "impair those respective statutory powers, discretion and authorities."
10. RSA 273-A:1, XI provides inter alia, "The phrase managerial policy within the exclusive prerogative of the public employer' shall be construed to include but shall not be limited to the the functions, programs and methods of the public employer, including...the selection, direction and number of its personnel...." (Emphasis added).

DECISION AND ORDER

Upon review of the pleading and the evidence presented, this Board finds sustainable complaint of prohibited practice. Respondent's Motion to Dismiss hereby GRANTED.

igned this 22nd day of January, 1992.


EDWARD J. HASELTINE
Chairman

unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour man and E. Vincent Hall present and voting.